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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,999	10/16/2003	Melanie Rembrandt	1-22101	7430

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MACMILLAN SOBANSKI & TODD, LLC
ONE MARITIME PLAZA FIFTH FLOOR
720 WATER STREET
TOLEDO, OH 43604-1619

EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/686,999	Applicant(s) REMBRANDT, MELANIE	
	Examiner Marie Patterson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5, 6 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5, 6, and 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5, 6, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stafford (3707784) in view of Esmonde (1738177) or Barrara (2205344).

Stafford shows a shoe comprising an upper (12 and 14), a rigid sole (18), a rigid heel (20, which appears to be a conventional heel which is rigid as is inherent and well known and conventional), and a multilayer shock absorbing cushion (22) with at least one layer which is thicker in the forefoot portion (shown in figures 7-12, layer 26) substantially as claimed except for tap plates. Either Esmonde or Carrara teaches providing heel and toe attachments comprising tap plates for placement on the bottom of sole of shoes for dancing. It would have been obvious to provide tap plates as taught by either Esmonde or Carrara in the shoe of Stafford to allow the shoe to be worn for tap dancing.

In reference to the exact upper configuration (i.e. claim 7), Esmonde and/or Carrara clearly shows and teaches a closed toed upper configuration. Stafford clearly states that the "spaced upper elements or straps 12 and the shoe upper heel area 14 forms no part of the present invention and may be varied to suit the aesthetic design appearance of the shoe that is desired" (column 3 lines 52-56). It would have been obvious to use a

closed toed upper as taught by either Esmonde or Carrara in the shoe of Stafford to provide a closed toed look, fashion, prevent toes from showing, etc..

3. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 5, 6, and 8-11 above, and further in view of De Obaldia (4535554).

Stafford as modified above shows a shoe substantially as claimed except for a fabric layer of the foam insole. De Obaldia teaches the well known and conventional practice of providing a textile layer over a foam layer in an insole (see column 2 lines 54-60). It would have been obvious to provide a textile/fabric layer as is well known and conventional and as taught by De OBaldia in the shoe of Stafford as modified above to increase comfort and durability.

Response to Arguments

4. Applicant's arguments filed 7/10/06 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards the strap arrangement/upper of Stafford, the language and disclosure of Stafford does not prevent the front most strap from being a closed toe type with other straps rear of the toe such as shown by Carrera and Esmonde which show a plurality of straps as part of the upper with the front of the upper being a closed toe form.

In response to applicants arguments directed towards the intended use of Stafford, the shoe of Stafford is directed towards "women's strap shoes, open toe, side, and heel shoes and other open work shoes" (column 1 lines 5-7). As shown by Esmonde and

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Carrara, women's strap shoes are commonly used for dancing. Esmonde and Carrara also clearly recite "attachments" for shoes and therefore the attachments disclosed by Esmonde and Carrara are intended to be used with any shoe which a user desires. A reference to Hedrick (4513519) has been cited showing that it is well known and conventional to provide tap attachments (such as those disclosed by Esmonde and Carrara) on "any "off the shelf" shoe" (see column 1 lines 5-9).

In response to applicants' arguments directed towards Stafford not having a thicker front portions, area 40 of Stafford is a "front portion" inasmuch as applicant has defined and claimed such.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.


Marie Patterson
Primary Examiner
Art Unit 3728